

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-			2010-1008-02E
For use by Office of Administrative Law (OAL) only			
2010 OCT -8 PM 2:47			
OFFICE OF ADMINISTRATIVE LAW			
NOTICE		REGULATIONS	

 AGENCY WITH RULEMAKING AUTHORITY
 State Board of Education

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

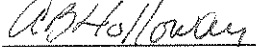
1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California High School Exit Examination (CAHSEE) Alternative Means		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 1216.1	
TITLE(S) 5		AMEND	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Connie Diaz, Regulations Analyst		TELEPHONE NUMBER (916) 319-0584	FAX NUMBER (Optional) (916) 319-0155
		E-MAIL ADDRESS (Optional) cdiaz@cde.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE



DATE

October 8, 2010

TYPED NAME AND TITLE OF SIGNATORY

Amy Blisson Holloway, General Counsel

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- 1 • The State Board of Education has illustrated changes to the original text in the
2 following manner: text originally proposed to be added is underlined; text proposed
3 to be deleted is displayed in ~~strikeout~~.
4

5 **Title 5. EDUCATION**

6 **Division 1. California Department of Education**

7 **Chapter 2. Pupils**

8 **Subchapter 6. California High School Exit Examination**

9 **Article 1. General**
10

11 **§ 1216.1. Implementation of an Alternative Means.**

12 The State Board of Education, pursuant to Education Code section 60852.2(b),
13 hereby extends the commencement date for implementation of alternative means by
14 which an eligible pupil with a disability may demonstrate the same level of academic
15 achievement in the content standards required for passage of the CAHSEE to July 1,
16 2012.

17 NOTE: Authority cited: Section 60852.2, Education Code. Reference: Section 60852.2,
18 Education Code.
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FINDING OF EMERGENCY

California High School Exit Examination (CAHSEE) Alternative Means

The State Board of Education (SBE) finds that an emergency exists and that the emergency regulations adopted are necessary to avoid serious harm to the public peace, health, safety, or general welfare, especially for students with disabilities (SWDs).

SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION

This emergency regulations package will implement the provisions of California Education Code section 60852.2(b), which requires that, commencing January 1, 2011, an eligible SWD may participate in alternative means of demonstrating the level of academic achievement in the content standards required for passage of the California High School Exit Examination (CAHSEE) in the manner prescribed by regulations adopted by the SBE pursuant to Education Code section 60851.1.

These regulations are a crucial component of the process the SBE is undertaking to develop alternative means for eligible SWDs, which will allow such pupils to demonstrate competency in reading, writing, and mathematics. Currently, all California public school students, except eligible SWDs, must satisfy the CAHSEE requirement as well as all other state and local requirements in order to receive a high school diploma. Under the provisions of Education Code section 60852.3(b), eligible SWDs are exempt from the CAHSEE requirement until the SBE either determines that alternative means are not feasible, or that alternative means are implemented. At its July meeting, the SBE determined that alternative means are feasible, but has not yet specified the nature of the alternative means that may be implemented at a later date. The SBE did request additional information and analysis of a proposed alternative means to be considered in order to begin a process for implementation. These emergency regulations, which extend the implementation date of the alternative means through July 1, 2012, have the effect of making clear the exemption under Education Code section 60852.3(b) is still in place for eligible SWDs in the graduating classes of 2011 and 2012.

The CAHSEE consists of two parts: English-language arts (ELA) and mathematics; both portions must be passed to satisfy the graduation requirement. All students, including SWDs, must take the CAHSEE in grade ten. Students who do not pass the CAHSEE in grade ten have the option of taking the CAHSEE two times in grade eleven and from three to five times in grade twelve. Studies have found that there are SWDs who have an individualized education plan (IEP) or Section 504 plan, which states that the student is scheduled to receive a high school diploma, and has satisfied, or will satisfy, all state and local requirements for high school graduation on or after July 1, 2009, and who have taken the CAHSEE at least twice since grade ten and at least once in grade 12 but have not passed one or both portions of the CAHSEE.¹

¹ For a description of the studies referenced, see page 5, "Technical, Theoretical, and/or Empirical Studies, Reports, or Documents."

The considerations and actions that the SBE has taken follows:

- At the May 2009 meeting, the SBE approved the appointment of members to the panel required by Education Code section 60852.1, consisting of educators and other individuals who have experience with the population of SWDs eligible for alternative means of demonstrating academic achievement.
- At the November 2009 meeting, the panel's findings and recommendations were presented to the SBE. The SBE deferred making a determination on alternative means, requesting that an analysis of the feasibility of these recommendations be performed.
- A contract amendment with the CAHSEE independent evaluator was negotiated for performance of the requested feasibility analysis of the alternative means proposed by the panel. The study was conducted between April and May 2010, and the analysis was conducted in June 2010.
- At the May 2010 meeting, the SBE was provided with background information regarding alternative means to the CAHSEE, and with the results of an analysis conducted pursuant to the Kidd (Chapman) settlement agreement on SWDs who had taken the CAHSEE with modifications and/or accommodations specified in their respective IEP or Section 504 plans, and who had not passed the CAHSEE, but who had satisfied, or would satisfy, all other requirements for high school graduation.
- In June 2010, the SBE was provided with additional background information on the use of specific accommodations and/or modifications by students with disabilities when taking one or both portions of the CAHSEE.
- At the July 2010 meeting, the SBE was provided with the results of an analysis performed by the CAHSEE independent evaluator of the panel's recommendations, and with an alternative recommendation by the State Superintendent of Public Instruction (SSPI) for a pilot study. The SBE made a determination that an alternative means to the CAHSEE for eligible SWDs is feasible, that the means could not yet be implemented and directed that regulations extending the implementation date of January 1, 2011, to July 1, 2012, be presented to the SBE for action at its September 2010 meeting.

Extending the implementation date through the emergency regulations will enable local educational agencies (LEAs) to meet the requirements of the Individuals with Disabilities Education Act (IDEA):

1. Students with disabilities who have IEPs are required by the IDEA to participate in statewide assessments.

(16) Participation in assessments.--(A) In general.--All children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs. [20 USC 1412 (a)(16)(A)]

2. Any change regarding how a student participates in assessment must be recorded in the IEP.

ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child;
[34 CFR §300.320 (a)(6)(ii)]

3. It is unlikely that LEAs can complete the large number of IEP meetings and/or modifications within the current timeline.

California Special Education Management Information System (CASEMIS) data indicate that there are over 155,000 students (grades 10, 11, 12 and post 12) whose IEPs might need modification. Of those, only 60,000 are scheduled for annual reviews before January 1, 2011. LEAs would need to prepare for, and conduct an additional 95,000 IEP meetings and documents to meet the current timeline.

An exemption from having to pass the CAHSEE in order to graduate is currently in place for SWDs. LEAs expect that this provision is in place and have reflected this in IEPs and planning. Without the extension of the timeline there would not be sufficient time for LEAs to convene the required number of meetings and may put students with disabilities in jeopardy.

FACTS EXPLAINING THE FAILURE TO ADDRESS THE SITUATION THROUGH NONEMERGENCY REGULATIONS

At the July 2010, SBE meeting, the SBE determined that it had sufficient information to make the determination that an alternative means was feasible. However, at that same meeting SBE also determined that it needed additional information in order to make a determination about what alternative means to implement and when it can be implemented. To date, the SBE still does not have this information. As such, the SBE was unable to act any sooner in promulgating a regulation to continue the January 1, 2011, date. Given the fact that the SBE meets on a bimonthly basis, and is a public body that meets pursuant to the requirements of Bagley-Keene, it would be difficult if not impossible to promulgate regulations affecting the January 1, 2011, date through the normal rulemaking process.

AUTHORITY AND REFERENCE

Authority: Section 60852.2, Education Code.

Reference: Section 60852.2, Education Code.

INFORMATIVE DIGEST

Studies have shown that there are students with disabilities (SWDs) who have an individualized education program (IEP) or Section 504 plan, which states that the student is scheduled to receive a high school diploma, and has satisfied, or will satisfy, all state and local requirements for high school graduation on or after July 1, 2009, and who have taken the California High School Exit Examination (CAHSEE) at least twice since grade ten and at least once in grade twelve but have not passed one or both portions of the CAHSEE; though the actual number of these students is still undetermined.² The SBE has been charged to consider an analysis of alternative means by which eligible SWDs may demonstrate the same level of academic achievement in the content standards in English-language arts or mathematics, or both, required for passage of the CAHSEE.

The SBE has determined that alternative means to the CAHSEE for eligible SWDs are feasible, but has not specified the nature of the alternative means. The proposed amendments to California Code of Regulations, Title 5, adding section 1216.1, would extend the date from January 1, 2011, until July 1, 2012, to provide for the necessary appropriate implementation of alternative means.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The SBE relied on various information in reaching its conclusion that alternative means are feasible, and that eligible SWDs could demonstrate the same level of academic achievement in the content standards in ELA and mathematics, or both, required for passage of the CAHSEE. The following information was considered:

- The 2007 California Department of Education report, *Considered Courses of Action for the California High School Exit Examination (CAHSEE) for Students with Disabilities Who Have Met All Other Graduation Requirements*, was included in a presentation on the background of alternative means provided to the SBE at its May 2010 meeting. The May 2010 item, specifically Attachment 4 relating to the AB 2040 Panel, can be found at the SBE Agenda—May 2010 Web page at <http://www.cde.ca.gov/be/ag/ag/yr10/agenda201005.asp>.

² For a description of the studies referenced, see page 5 of the Finding of Emergency, "Technical, Theoretical, and/or Empirical Studies, Reports, or Documents."

- The 2008 Human Resources Research Organization (HumRRO) report examining what schools were doing to support special populations as they attempted to meet the CAHSEE requirement, *California High School Exit Examination (CAHSEE) Special Populations Study*. This report may be found on the CDE CAHSEE Independent Evaluation Web page at <http://www.cde.ca.gov/ta/tg/hs/evaluations.asp>.
- The *California High School Exit Examination: Assembly Bill 2040 Panel Findings and Recommendations Regarding Options for Alternative Means for Eligible Students with Disabilities* was presented to the SBE at its November 2009 meeting. The November 2009 item can be found at the SBE Agenda—November 2009 Web page at <http://www.cde.ca.gov/be/ag/ag/yr09/documents/nov09item22.doc>.
- The 2010 American Institutes for Research analysis performed pursuant to the Kidd (Chapman) settlement agreement on SWDs who had taken the CAHSEE with modifications and/or accommodations specified in their respective IEPs or Section 504 plans, and who had not passed the CAHSEE, but who had satisfied, or would satisfy, all other requirements for high school graduation, *Independent Evaluation Study of Certain Students Who Used Modifications and/or Accommodations on the California High School Exit Examination (CAHSEE) Final Report*. This report may be found on the CDE CAHSEE Independent Evaluation Web page at <http://www.cde.ca.gov/ta/tg/hs/evaluations.asp>.
- HumRRO's 2010 analysis of the panel's recommended alternative means, *Exploration of Alternative Means for Students with Disabilities to Meet the CAHSEE Requirement*. The results of this analysis were provided to the SBE in the form of a PowerPoint presentation at its July 2010 meeting. The July 2010 item can be found on the SBE Agenda—July 2010 Web page at <http://www.cde.ca.gov/be/ag/ag/main201007.asp>.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose a mandate on local agencies or school districts.

COST ESTIMATE

The emergency regulations would not place any additional costs or savings on local agencies or school districts.

9-1-10 [California Department of Education]



CALIFORNIA DEPARTMENT OF EDUCATION
JACK O'CONNELL, State Superintendent of Public Instruction
916-319-0800



CALIFORNIA STATE BOARD OF EDUCATION
THEODORE R. MITCHELL, President
916-319-0827

September 16, 2010

NOTICE OF PROPOSED EMERGENCY ACTION
California High School Exit Examination (CAHSEE) Alternative Means

Pursuant to the requirements of Government Code (Gov. Code) section 11346.4(a)(1), the State Board of Education (SBE) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

SUBMISSION OF COMMENTS

Gov. Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Gov. Code section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SBE submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding "CAHSEE Alternative Means" addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov
Fax No.: 916-323-6826

For the status of the SBE submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of the OAL at www.oal.ca.gov under the heading "Emergency Regulations."